

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION

HELEN SIMS

PLAINTIFF

vs.

Civil Action No. 4:95cv367-D-B

HARTFORD ACCIDENT AND INDEMNITY
CO. and CONAGRA, INC.

DEFENDANTS

MEMORANDUM OPINION

Presently before the court is the motion of the defendant ConAgra, Inc. for the entry of summary judgment on its behalf as to the plaintiff's claims against it. Finding the motion well taken, the same shall be granted.

I. FACTUAL BACKGROUND

On or about October 3, 1987, while employed by the defendant ConAgra, Inc. ("ConAgra"), the plaintiff Helen Sims suffered a work-related injury to her shoulder. Ms. Sims reported the injury to ConAgra, who in turn notified its workers' compensation insurance carrier Hartford Accident and Indemnity Company ("Hartford"). The defendant Hartford paid medical bills incurred by Sims, and also paid to her temporary total disability benefits when Sims stopped working after January 15, 1988. Hartford discontinued these payments on July 18, 1988.

Sims' workers' compensation claim was heard by a state Administrative Law Judge on April 22, 1994. The ALJ ruled on June 23, 1994 that Sims was entitled to the payment of temporary total disability benefits for the period of January 15, 1988 to June 9, 1988, and to the payment of permanent partial disability benefits. The Mississippi Workers' Compensation Commission affirmed this order of the ALJ on December 9, 1994.

The plaintiff now brings this action against the defendants for the bad faith refusal to pay insurance benefits to the plaintiff under the policy of insurance between the defendants ConAgra and Hartford to provide workers' compensation protection for the benefit of ConAgra's employees. ConAgra has now moved the court for the entry of summary judgment on its behalf, and asserts that

there are no facts in support of the plaintiff's claim against it. The plaintiff has failed to respond to this motion. This court recognizes that it cannot grant summary judgment by default, i.e., simply because there is no opposition to the motion. Hibernia Nat'l Bank v. Admin. Central Sociedad Anonima, 776 F.2d 1277, 1279 (5th Cir. 1985). However, the court may accept as undisputed the movant's version of the facts and grant the motion where the movant has made a prima facie showing of its entitlement to summary judgment. Eversley v. Mbank Dallas, 843 F.2d 172, 174 (5th Cir. 1988).

II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." F.R.C.P. 56(c). The party seeking summary judgment carries the burden of demonstrating that there is an absence of evidence to support the non-moving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2553, 91 L.Ed.2d 265 (1986). Once a properly supported motion for summary judgment is presented, the burden shifts to the non-moving party to set forth specific facts showing that there is a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L.Ed.2d 202 (1986); Brothers v. Klevenhagen, 28 F.3d 452, 455 (5th Cir. 1994). "Where the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L.Ed.2d 538 (1986); Federal Sav. & Loan Ins. v. Kralj, 968 F.2d 500, 503 (5th Cir. 1992). The facts are reviewed drawing all reasonable inferences in favor of the party opposing the motion. Matagorda County v. Russel Law, 19 F.3d 215, 217 (5th Cir. 1994).

III. THE PLAINTIFF'S CLAIM AGAINST CONAGRA

In her complaint, the essence of the plaintiff's claim in this case is that

[o]n or about July 18, 1988, Defendant Hartford willfully, intentionally, wrongfully and in bad faith suspended, terminated and otherwise failed and refused to pay unto Plaintiff the compensation and medical benefits to which she was entitled.

Plaintiff's Complaint, ¶ IV. There is no similar statement in the complaint explicitly charging the defendant ConAgra with such a failure. However, this appears to have been the plaintiff's contention, for she later charges that she is due compensation

[a]s a result of the intentional bad faith refusal of the **Defendants** to pay and provide workers' compensation benefits as described herein

Plaintiff's Complaint, ¶ VI (emphasis added). Without regard to the sufficiency of the plaintiff's pleadings in this case, it is the position of the defendant ConAgra that the plaintiff has insufficient proof to establish a claim against it.

"It is well settled under Mississippi law that an injured employee may bring a civil action against his employer or employer's workers' compensation carrier to recover for the bad faith refusal to pay workers' compensation benefits." Shepard v. Boston Old Colony Ins. Co., 811 F. Supp. 225, 230 (S.D. Miss. 1992); see also McFadden v. Liberty Mut. Ins. Co., 803 F. Supp. 1178, 1183 (N.D. Miss. 1992); Southern Farm Bureau Cas. Ins. v. Holland, 469 So. 2d 55, 58-59 (Miss. 1985). Nonetheless, a plaintiff still must provide the requisite quantum of evidence when faced with a proper motion for summary judgment.

ConAgra has submitted to this court affidavit proof that it made no decisions regarding the payment or non-payment of workers' compensation benefits to the plaintiff in this case. Rather, ConAgra urges, disposition of this matter was left entirely with its carrier Hartford:

Hartford made the decisions relative to the payment of workers' compensation benefits to Helen Sims. Neither I nor anyone else employed by ConAgra, Inc. made, participated in or was otherwise involved with the decision to terminate or suspend temporary total disability benefits to Helen Sims on July 18, 1988.

Affidavit of Gary Weigel, Exhibit "B" to ConAgra's Motion for Summary Judgment. In that the plaintiff has not responded to ConAgra's motion, she has offered nothing to dispute this evidence and demonstrate a genuine issue of material fact. As there is no proof that ConAgra made any decision or took any action to deny or withdraw benefits from the plaintiff, no reasonable juror would find for the plaintiff on her claims against ConAgra in this cause.

CONCLUSION

The defendant ConAgra has carried its burden to establish that it is entitled to the entry of summary judgment in this cause. The plaintiff has also failed to demonstrate the existence of a genuine issue of material fact as to any of her claims against ConAgra. There is no genuine issue of material fact as to her claims, and the defendant ConAgra is entitled to the entry of a judgment as a matter of law. The motion of the defendant ConAgra for the entry of summary judgment shall be granted.

A separate order in accordance with this opinion shall issue this day.

THIS ___ day of June, 1996.

United States District Judge

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DEFENDANTS

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT

Pursuant to a memorandum opinion issued this day, it is hereby ORDERED THAT:

1) the motion of the defendant ConAgra, Inc., for the entry of summary judgment on its behalf is hereby GRANTED; and

2) the plaintiff's claims against the defendant ConAgra, Inc. are hereby DISMISSED.

SO ORDERED, this the ___ day of June, 1996.

United States District Judge